

**MAY 24 2006****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE LUIS RODRIGUEZ-GONZALEZ,  
aka Jose Luis Rodriguez,

Defendant - Appellant.

No. 04-50533

D.C. No. CR-04-00426-RGK

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Submitted May 15, 2006<sup>\*\*</sup>

Before: B. FLETCHER, TROTT, and CALLAHAN, Circuit Judges.

Jose Luis Rodriguez-Gonzalez appeals from the 57-month sentence imposed after his guilty-plea conviction to unlawful re-entry following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Rodriguez-Gonzalez's contention that the district court's condition of supervised release requiring him to report to the probation officer within 72 hours of reentry into the United States violates his Fifth Amendment rights is foreclosed by this court's opinion in *United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (9th Cir. 2006).

However, because Rodriguez-Gonzalez was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the district court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional error under *United States v. Booker*, 543 U.S. 220 (2005)).

**REMANDED.**